

Public



STATE OF NEW YORK
DEPARTMENT OF HEALTH

433 River Street, Suite 303 Troy, New York 12180-2299

Richard F. Daines, M.D.
Commissioner

May 21, 2009

Wendy E. Saunders
Chief of Staff

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Thomas Peter Wentland, M.D.
2010 S. Arlington Heights Road
Suite 240
Arlington Heights, Illinois 60005

Thomas Peter Wentland, M.D.
Redacted Address

Robert Bogan, Esq.
NYS Department of Health
Hedley Park Place
433 River Street – Suite 303
Troy, New York 12180

RE: In the Matter of Thomas Peter Wentland, M.D.

Dear Parties:

Enclosed please find the Determination and Order (No. 09-99) of the Hearing Committee in the above referenced matter. This Determination and Order shall be deemed effective upon the receipt or seven (7) days after mailing by certified mail as per the provisions of §230, subdivision 10, paragraph (h) of the New York State Public Health Law.

Five days after receipt of this Order, you will be required to deliver to the Board of Professional Medical Conduct your license to practice medicine together with the registration certificate. Delivery shall be by either certified mail or in person to:

Office of Professional Medical Conduct
New York State Department of Health
Hedley Park Place
433 River Street - Fourth Floor
Troy, New York 12180

If your license or registration certificate is lost, misplaced or its whereabouts is otherwise unknown, you shall submit an affidavit to that effect. If subsequently you locate the requested items, they must then be delivered to the Office of Professional Medical Conduct in the manner noted above.

As prescribed by the New York State Public Health Law §230, subdivision 10, paragraph (i), (McKinney Supp. 2007) and §230-c subdivisions 1 through 5, (McKinney Supp. 2007), "the determination of a committee on professional medical conduct may be reviewed by the Administrative Review Board for professional medical conduct." Either the licensee or the Department may seek a review of a committee determination.

Request for review of the Committee's determination by the Administrative Review Board stays penalties other than suspension or revocation until final determination by that Board. Summary orders are not stayed by Administrative Review Board reviews.

All notices of review must be served, by certified mail, upon the Administrative Review Board and the adverse party within fourteen (14) days of service and receipt of the enclosed Determination and Order.

The notice of review served on the Administrative Review Board should be forwarded to:

James F. Horan, Esq., Administrative Law Judge
New York State Department of Health
Bureau of Adjudication
Hedley Park Place
433 River Street, Fifth Floor
Troy, New York 12180

The parties shall have 30 days from the notice of appeal in which to file their briefs to the Administrative Review Board. Six copies of all papers must also be sent to the attention of Mr. Horan at the above address and one copy to the other party. The stipulated record in this matter shall consist of the official hearing transcript(s) and all documents in evidence.

Parties will be notified by mail of the Administrative Review Board's Determination and Order.

Sincerely,
Redacted Signature

James F. Horan, Acting Director
Bureau of Adjudication

JFH:cah

Enclosure

STATE OF NEW YORK : DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

COPY

IN THE MATTER

OF

THOMAS PETER WENTLAND, M.D.

DETERMINATION

AND

ORDER

BPMC #09-99

A hearing was held on April 22, 2009, at the offices of the New York State Department of Health ("the Petitioner"). A Notice of Referral Proceeding and a Statement of Charges, both dated February 18, 2009, were served upon the Respondent, **Thomas Peter Wentland, M.D.** Pursuant to Section 230(10)(e) of the Public Health Law, **Irving S. Caplan**, Chairperson, **Eleanor C. Kane, M.D.**, and **Fred S. Levinson, M.D.**, duly designated members of the State Board for Professional Medical Conduct, served as the Hearing Committee in this matter. **John Wiley, Esq.**, Administrative Law Judge, served as the Administrative Officer.

The Petitioner appeared by **Thomas Conway, Esq.**, General Counsel, by **Robert Bogan, Esq.**, of Counsel. The Respondent did not appear at the hearing either in person or by counsel. He did submit a memorandum by facsimile that was taken into evidence as Respondent's Ex. A.

Evidence was received and transcripts of these proceedings were made.

After consideration of the entire record, the Hearing Committee issues this Determination and Order.

BACKGROUND

This case was brought pursuant to Public Health Law Section 230(10)(p). The statute provides for an expedited hearing when a licensee is charged solely with a violation of Education Law Section 6530(9). In such cases, a licensee is charged with misconduct based upon a prior criminal conviction in New York State or another jurisdiction, or upon a prior administrative adjudication regarding conduct that would amount to professional misconduct, if committed in New York. The scope of an expedited hearing is limited to a determination of the nature and severity of the penalty to be imposed upon the licensee.

In the instant case, the Respondent is charged with professional misconduct pursuant to Education Law Section 6530(9)(d). Copies of the Notice of Referral Proceeding and the Statement of Charges are attached to this Determination and Order as Appendix 1.

WITNESSES

For the Petitioner: None

For the Respondent: None

FINDINGS OF FACT

The following Findings of Fact were made after a review of the entire record in this matter. Numbers below in parentheses refer to exhibits, denoted by the prefix "Ex." These citations refer to evidence found persuasive by the Hearing Committee in arriving at a particular finding. Conflicting evidence, if any, was considered and rejected in favor of the cited evidence. All Hearing Committee findings were unanimous.

1. Thomas Peter Wentland, M.D., the Respondent, was authorized to practice medicine in New York State on January 16, 1996, by the issuance of license number 201936 by the New York State Education Department (Petitioner's Ex. 4).

2. On May 20, 2008, the Illinois Department of Financial and Professional Regulation, Division of Professional Regulation ("Illinois Board"), by a Consent Order ("Illinois Order"), placed the Respondent's license to practice medicine on two years probation, fined him \$2,000.00 and suspended his controlled substance license for 30 days and placed it on probation for one year, based on allowing an unlicensed individual to write prescriptions for persons who received anabolic steroids for five individuals and on failing to maintain medical records for these individuals. (Petitioner's Ex. 5).

HEARING COMMITTEE CONCLUSIONS

The Hearing Committee concludes that the conduct of the Respondent would constitute professional misconduct under the laws of New York State, had the conduct occurred in New York State, pursuant to:

- New York Education Law Section 6530(3) - "Practicing the profession with negligence on more than one occasion;"
- New York Education Law Section 6530(11) - "Permitting, aiding or abetting an unlicensed person to perform activities requiring a license;"
- New York Education Law Section 6530(25) - "Delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them;" and
- New York Education Law Section 6530(32) - "Failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient..."

VOTE OF THE HEARING COMMITTEE

SPECIFICATION

"Respondent violated New York Education Law Section 6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state..."

VOTE: Sustained (3-0)

HEARING COMMITTEE DETERMINATION

The Respondent did not appear at the hearing either in person or by counsel. The Administrative Law Judge ruled that the Petitioner had met the requirements of law for service of the Notice of Referral Proceeding and the Statement of Charges on the Respondent and that, therefore, the hearing could proceed despite the absence of the Respondent.

The Respondent allowed an unlicensed person to write prescriptions for persons who received anabolic steroids for five individuals. The Respondent failed to maintain medical records for these individuals. This was the basis for the sanctions imposed by the Illinois Board in the Illinois Order.

In Respondent's Ex. A, the Respondent offered no evidence of remorse, rehabilitation, mitigating circumstances or any other factor that could be helpful to his case. His only argument was that although he had a medical license in New York State, he should not be disciplined because it was an inactive license. He had never had a medical practice in New York State and had no intention to establish one. He stated that he had never renewed the license. This renewal argument confuses a physician's registration, which is renewed every two years, with the medical license, which never needs to be renewed. Although the Respondent has not been renewing his registration

every two years, this has no effect on the fact that the license that he received in 1996 is still in existence and, therefore, still subject to discipline. The Respondent suggested that a professional medical conduct proceeding based on out-of-state actions should be initiated only if he decides to re-activate his New York license (presumably for the purpose of practicing medicine in New York State). This may or may not be good public policy, but it is not the law in New York State. The Petitioner is free to commence the professional medical conduct proceeding regardless of the location of the Respondent's present practice and his intentions regarding practicing in New York State in the future.

Prescribing anabolic steroids can be a dangerous act. Allowing unlicensed persons to write prescriptions is a dangerous act. Allowing an unlicensed person to write prescriptions for anabolic steroids is an exceptionally dangerous act. Given the inherent danger of these acts and the Respondent's failure to appear at the hearing and submit any evidence helpful to his case, the only adequate penalty that can be imposed is a revocation of the Respondent's license.

ORDER

IT IS HEREBY ORDERED THAT:

1. The license to practice medicine of the Respondent, Thomas Peter Wentland, M.D., is revoked.
2. This Order shall be effective upon service on the Respondent in accordance with the requirements of Public Health Law Section 230(10)(h).

DATED: Malone, New York
5-18, 2009

Redacted Signature

Irving S. Caplan
Chairperson

Eleanor C. Kane, M.D.
Fred S. Levinson, M.D.

APPENDIX I

STATE OF NEW YORK DEPARTMENT OF HEALTH
STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT



IN THE MATTER
OF
THOMAS PETER WENTLAND, M.D.
CO-08-07-4383-A

NOTICE OF
REFERRAL
PROCEEDING

TO: THOMAS PETER WENTLAND, M.D.
2010 S. Arlington Heights Rd.
Suite 240
Arlington Heights, IL 60005

THOMAS PETER WENTLAND, M.D.
Redacted Address

PLEASE TAKE NOTICE THAT:

An adjudicatory proceeding will be held pursuant to the provisions of New York Public Health Law §§230(10)(p) and New York State Administrative Procedures Act §§301-307 and 401. The proceeding will be conducted before a committee on professional conduct of the State Board for Professional Medical Conduct (Committee) on the 22nd day of April, 2009, at 10:00 a.m., at the offices of the New York State Department of Health, Hedley Park Place, 433 River Street, 5th Floor, Troy, NY 12180.

At the proceeding, evidence will be received concerning the allegations set forth in the Statement of Charges, which is attached. A stenographic record of the proceeding will be made and the witnesses at the proceeding will be sworn and examined.

You may appear in person at the proceeding and may be represented by counsel who shall be an attorney admitted to practice in New York state. You may produce evidence or sworn testimony on your behalf. Such evidence or sworn testimony shall be strictly limited to evidence and testimony relating to the nature and severity of the penalty to be imposed upon the licensee. Where the charges are based on the conviction of state law crimes in other jurisdictions, evidence may be offered which would show that the conviction would not be a crime in New York State. The Committee

also may limit the number of witnesses whose testimony will be received, as well as the length of time any witness will be permitted to testify.

If you intend to present sworn testimony, the number of witnesses and an estimate of the time necessary for their direct examination must be submitted to the New York State Department of Health, Division of Legal Affairs, Bureau of Adjudication, Hedley Park Place, 433 River Street, Fifth Floor South, Troy, NY 12180, ATTENTION: HON. SEAN D. O'BRIEN, DIRECTOR, BUREAU OF ADJUDICATION (Telephone: (518-402-0748), (henceforth "Bureau of Adjudication") as well as the Department of Health attorney indicated below, no later than ten days prior to the scheduled date of the Referral Proceeding, as indicated above.

Pursuant to the provisions of New York Public Health Law §230(10)(p), you shall file a written answer to each of the charges and allegations in the Statement of Charges not less than ten days prior to the date of the hearing. Any charge or allegation not so answered shall be deemed admitted. You may wish to seek the advice of counsel prior to filing such answer. The answer shall be filed with the Bureau of Adjudication, at the address indicated above, and a copy shall be forwarded to the attorney for the Department of Health whose name appears below. You may file a written brief and affidavits with the Committee. Six copies of all papers you submit must be filed with the Bureau of Adjudication at the address indicated above, no later than fourteen days prior to the scheduled date of the Referral Proceeding, and a copy of all papers must be served on the same date on the Department of Health attorney indicated below. Pursuant to §301(5) of the State Administrative Procedure Act, the Department, upon reasonable notice, will provide at no charge a qualified interpreter of the deaf to interpret the proceedings to, and the testimony of, any deaf person. Pursuant to the terms of New York State Administrative Procedure Act §401 and 10 N.Y.C.R.R. §51.8(b), the Petitioner hereby demands disclosure of the evidence that the Respondent intends to introduce at the hearing, including the names of witnesses, a list of and copies of documentary evidence and a description of physical or other evidence which cannot be photocopied.

YOU ARE ADVISED, HEREBY, THAT THE ATTACHED CHARGES WILL BE MADE PUBLIC FIVE BUSINESS DAYS AFTER THEY ARE SERVED.

Department attorney: Initial here 

The proceeding may be held whether or not you appear. Please note that requests for adjournments must be made in writing to the Bureau of Adjudication, at the address indicated above, with a copy of the request to the attorney for the Department of Health, whose name appears below, at least five days prior to the scheduled date of the proceeding. Adjournment requests are not routinely granted. Claims of court engagement will require detailed affidavits of actual engagement. Claims of illness will require medical documentation. Failure to obtain an attorney within a reasonable period of time prior to the proceeding will not be grounds for an adjournment.

The Committee will make a written report of its findings, conclusions as to guilt, and a determination. Such determination may be reviewed by the administrative review board for professional medical conduct.

SINCE THESE PROCEEDINGS MAY RESULT IN A DETERMINATION THAT SUSPENDS OR REVOKES YOUR LICENSE TO PRACTICE MEDICINE IN NEW YORK STATE AND/OR IMPOSES A FINE FOR EACH OFFENSE CHARGED, YOU ARE URGED TO OBTAIN AN ATTORNEY TO REPRESENT YOU IN THIS MATTER.

DATED: Albany, New York

Feb 18, 2009

Redacted Signature

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct

Inquiries should be addressed to:

Robert Bogan
Associate Counsel
New York State Department of Health
Office of Professional Medical Conduct
433 River Street – Suite 303
Troy, New York 12180
(518) 402-0828

These charges are only allegations which may be contested by the licensee in an administrative hearing.

STATE OF NEW YORK : DEPARTMENT OF HEALTH

STATE BOARD FOR PROFESSIONAL MEDICAL CONDUCT

IN THE MATTER
OF
THOMAS PETER WENTLAND, M.D.
CO-08-07-4383-A

STATEMENT
OF
CHARGES

THOMAS PETER WENTLAND, M.D., Respondent, was authorized to practice medicine in New York state on January 16, 1996, by the issuance of license number 201936 by the New York State Education Department.

FACTUAL ALLEGATIONS

A. On or about May 20, 2008, the State of Illinois, Department of Financial and Professional Regulation, Division of Professional Regulation (hereinafter "Illinois Board"), by a Consent Order (hereinafter "Illinois Order"), inter alia, placed Respondent's license to practice medicine on two (2) years probation, fined him \$2,000.00, and suspended his controlled substance license for thirty (30) days and placed it on one (1) year probation, based on allowing an unlicensed individual to write prescriptions for persons who received anabolic steroids for five (5) individuals and failing to maintain medical records for these individuals.

B. The conduct resulting in the Illinois Board disciplinary action against Respondent would constitute misconduct under the laws of New York State, pursuant to the following sections of New York State law:

1. New York Education Law §6530(3) (negligence on more than one occasion);
2. New York Education Law §6530(11) (permitting, aiding or abetting an unlicensed person to perform activities requiring a license);
3. New York Education Law §6530(25) (delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience, or by licensure, to perform them; and/or
4. New York Education Law §6530(32) (failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient).

SPECIFICATION

Respondent violated New York Education Law §6530(9)(d) by having disciplinary action taken by a duly authorized professional disciplinary agency of another state, where the conduct resulting in the disciplinary action would, if committed in New York state, constitute professional misconduct under the laws of New York state, in that Petitioner charges:

1. The facts in Paragraphs A and/or B.

DATED: *Feb. 18*, 2009
Albany, New York

Redacted Signature

PETER D. VAN BUREN
Deputy Counsel
Bureau of Professional Medical Conduct